

§215.11

36 CFR Ch. II (7–1–01 Edition)

§215.11 Who may participate in appeals.

(a) Except as provided for in paragraph (c) of this section, an appeal pursuant to this part may be filed by any person who, or any non-Federal organization or entity that has met either of the following criteria:

(1) Submitted written comment in response to a project draft Environmental Impact Statement; or

(2) Provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period specified in §215.6.

(b) Persons interested in or potentially affected by an appeal may participate as an interested party, as provided in §215.13(e).

(c) Federal agencies may not participate as appellants or interested parties.

(d) Federal employees filing appeals under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Employees also shall not use official information not yet released to the public.

[58 FR 58910, Nov. 4, 1993, as amended at 63 FR 4188, Jan. 28, 1998]

§215.12 Where to file appeals.

The Appeal Deciding Officer with whom appeals must be filed are as follows:

If the responsible official who made the decision is:	Then the appeal deciding officer is:
Regional Forester	Chief of the Forest Service.
Forest Supervisor or	Regional Forester.
District Ranger	Do.

§215.13 Appeal time periods and process.

(a) *Filing procedures.* To appeal a decision under this part, a person must submit a written appeal to the Appeal Deciding Officer within the 45 day appeal filing period specified in the public notice published pursuant to §215.9.

(b) *Computation of time periods.* (1) The day after the publication of the public notice published pursuant to §215.9 is the first day of the appeal filing period.

(2) All time periods in this section are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing an appeal. However, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* The appellant is responsible for submitting an appeal on or before the last day of the appeal filing period. Where there is a question about timelines of an appeal, the U.S. Postal Service postmark on a mailed appeal or the time and date imprint on a facsimile appeal will be used to determine timeliness.

(d) *Time extensions.* Time extensions are not permitted.

(e) *Interested party comments.* Interested parties must submit written comments to the Appeal Reviewing Officer within 15 days after close of the appeal filing period and are encouraged to provide a copy to the appellants at the same time. An interested party can obtain the address of the Appeal Reviewing Officer and appellants by contacting the Appeal Deciding Officer.

(f) *Time period for formal disposition.* Unless an appeal is resolved through the informal disposition process provided for in §215.16, the following time-frame and process shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal filing period, the Responsible Official shall transmit the appeal record to the Appeal Reviewing Officer.

(2) *Review recommendation.* Within 30 days of the close of the appeal filing period, the Appeal Reviewing Officer shall review the appeal record and forward it to the Appeal Deciding Officer with a written recommendation on the disposition of the appeal(s). The Appeal Reviewing Officer's recommendation shall be released upon issuance of an appeal decision.

(3) *Appeal decision.* Within 45 days following the end of the appeal filing period, the Appeal Deciding Officer shall issue a written decision or otherwise give notice to appellant(s) concerning the disposition of the appeal. The decision or notice shall briefly explain why

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the Responsible Official's original decision was affirmed or reversed, in whole or in part.

§ 215.14 Content of an appeal.

(a) It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed.

(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215;

(2) List the name and address of the appellant and, if possible, a telephone number;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in § 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

§ 215.15 Dismissal of appeal without review.

(a) An Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The appeal is not postmarked or the facsimile is not date imprinted within the 45-day appeal filing period in accordance with § 215.13;

(2) The requested relief or change cannot be granted under law, fact, or regulation;

(3) The decision at issue is being appealed by the appellant under another administrative proceeding;

(4) The decision is excluded from appeal pursuant to § 215.8;

(5) The appellant did not express an interest in the specific proposal at any time prior to the close of the comment period specified in § 215.6;

(6) The Responsible Official has withdrawn the decision being appealed; or

(7) The appellant has filed for Federal judicial review of the decision and the

Chief has waived the argument in § 215.20.

(b) The Appeal Deciding Officer shall give written notice to the appellant, interested parties, and Responsible Official that an appeal is dismissed and state the reasons for dismissal.

§ 215.16 Informal disposition.

(a) *Offer to meet.* When a decision is appealed under this part, the Responsible Official must contact the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after an appeal has been filed.

(b) *Time and location of meeting.* If one or more appellants agree to meet, the meeting(s) must take place not later than 15 days after the closing date for filing an appeal. The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Type of meeting.* Generally, participants shall be physically present at informal disposition meetings. Where an appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. This alternative type meeting also must take place not later than 15 days after the closing date for filing an appeal. The informal disposition meeting must be open to interested parties and the public.

(d) *Agreement on disposition.* The Responsible Official must notify the Appeal Deciding Officer of the names of meeting participants and the outcome of the informal disposition meeting.

(1) If the appellant(s) and Responsible Official reach agreement on disposition of the appeal, the Responsible Official shall so notify the Appeal Deciding Officer and the appellant shall withdraw the appeal by letter to the Appeal Deciding Officer no later than 15 days after the meeting. Upon notice from